

REMARKS/ARGUMENTS

The Office Action mailed December 13, 2007 has been carefully considered. Claim 5 and 6 have been amended to more precisely recite the differences to the prior art cited by the Examiner against them. Claims 7 to 10 have been formally amended. New claims 11 to 16 have been added.

The First 35 U.S.C. § 103(a) Rejection

Claims 5, 7-8 and 10 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Baker (U.S Patent No. 3,651,817) in view of Trikilis (U.S Patent No. 4,989,368). This rejection is respectfully traversed.

Applicant has cited the US patent of Baker in section [0006] of the present patent application. As can be read there, the container of Baker has a drum which can be rotated on an axis and a chamber for storage of the extinguished cigarette stubs. The drum has longitudinal recesses for the temporary acceptance of a cigarette stub. This container is relatively complicated and unwieldy and, because of its shape, is not suitable as a portable container that can be carried as a personal utensil because it is rather big in size and heavy. The container of the present invention as claimed in claim 5 is different from the container of Baker in some important points:

1. As can be seen in figure 1 of Baker the cigarette is put in the container at a side face of the drum by opening lid 14. Lid 14 is rotatable on an axis that runs parallel to the axis of rotation of the drum. With the present invention the cigarette is put in the container at a front face of the drum. The front face of the drum runs orthogonally to the axis of rotation of the drum. Claim 5 has been amended to reflect this important difference.

2. For receiving a cigarette, with the container of Baker the lid 14 must be opened. The lid 14 is arranged at the container in such a way that it opens like a door which means that the

outer shape of the container changes. With the present invention the lid 3 does not open and close like a door because the lid 3 is rotated on an axis that runs through the center of the lid 3. This results in the advantage that the outer shape of the container does not change and is not temporarily enlarged when a cigarette is introduced in the container. This distinguishing feature is contained in claim 5 in the limitation, that the lid is connected to the drum and rotates with the drum. With Baker, the lid 14 is not connected to the drum 16 but to the housing 12 (see figure 1 or figure 5). The forked element 50 shown in figure 5 is not the lid itself but is a separate element fixed at the lid 14 and engaging into a recess of the drum. Furthermore the lid 14 does not rotate with the drum 16 as recited in amended claim 5.

From the above it follows that Baker does not disclose the following limitations of amended claim 5:

a drum divided into drum parts, whereby neighbouring drum parts are separated by gaps running orthogonally to a rotation axis,

an opening that is arranged opposite to a front face of the drum and that in specific rotating positions of the drum aligns with said at least one recess of the drum, the front face of the drum running substantially orthogonally to said rotation axis of the drum,

a lid connected to the drum and rotating with the drum, the lid having at least one opening for the insertion of a cigarette stub, whereby the lid either uncovers or covers said opening of the container, and

a plurality of elements arranged on a side wall of the container, each element being assigned to one of said gaps and protruding into the assigned gap so that the elements change the cross-section of said at least one recess on turning the drum.

Trikilis discloses a revolving door and therefore does not belong to the pertinent art. The person skilled in the art reading the patent of Baker gains no motivation or suggestion to replace

the drum of Baker with the revolving door of Trikilis. The prior art cited against a patent application must be viewed without reading the application's teachings into the references. When prior art references are selectively combined, as done here by the Examiner, to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself. Such a reason is lacking in this situation. But even if the person skilled in the art would combine the teachings of Baker and Trikilis he would not arrive at the invention as recited in amended claim 5 because the combination does not show at least the following limitations of amended claim 5:

an opening that is arranged opposite to a front face of the drum and that in specific rotating positions of the drum aligns with said at least one recess of the drum, the front face of the drum running substantially orthogonally to said rotation axis of the drum,

a lid connected to the drum and rotating with the drum, the lid having at least one opening for the insertion of a cigarette stub, whereby the lid either uncovers or covers said opening of the container.

From the above it follows that it cannot be maintained that Baker in view of Trikilis renders the invention as claimed in amended claim 5 obvious. Therefore the rejection of claim 5 under 35 U.S.C. 103(a) should be withdrawn and amended claim 5 allowed.

Claims 7-8 and 10 depend directly or indirectly from claim 5 and thereby incorporate the limitations of claim 5. It therefore follows that Baker and Trikilis also contain insufficient teaching to render claims 7-8 and 10 obvious. Therefore, the rejection of claims 7-8 and 10 under 35 U.S.C. 103(a) should be withdrawn and claims 7-8 and 10 allowed.

The Second 35 U.S.C. § 103(a) Rejection

Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Baker (U.S Patent No. 3,651,817) and Trikilis (U.S Patent No. 4,989,368) as applied to claim 5 above and further in view of Manion (U.S Patent No. 2,661,747). This rejection is respectfully traversed.

Claim 6 has been amended to specify how the inner floor is bent. The bending of the inner floor has been made in order to achieve that the cigarette stub is also moved in the direction of the rotation axis of the drum. This movement supports the releasing of the cigarette stub from the body and ensures that even a cigarette stub sticking or adhering to the body is removed without problem (see section [0022]). Manion shows a housing with a bent surface that has no function and certainly not the function described above. Manion does not disclose a housing having an inner bent floor.

From this it follows that it cannot be maintained that the combination of Baker, Trikilis and Manion renders the invention as claimed in amended claim 6 obvious. Therefore the rejection of claim 5 under 35 U.S.C. 103(a) should be withdrawn and amended claim 6 allowed.

Claim 9 depends from claim 6 and thereby incorporates the limitations of claim 6. It therefore follows that Baker, Trikilis and Manion also contain insufficient teaching to render claim 9 obvious. Therefore, the rejection of claim 9 under 35 U.S.C. 103(a) should be withdrawn and claim 9 allowed.

In view of the foregoing, it is respectfully asserted that the claims 5 to 16 are now in condition for allowance.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,
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